

Reuben Yeroushalmi (SBN 193981)
 Peter T. Sato (SBN 238486)
YEROUSHALMI & YEROUSHALMI
 An Association of Independent Law Corporations
 9100 Wilshire Boulevard, Suite 240W
 Beverly Hills, California 90212
 Telephone: (310) 623-1926
 Facsimile: (310) 623-1930

Attorneys for Plaintiff,
 Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC.,
 in the public interest,

Plaintiff,

v.

MACY'S, INC., a business entity form
 unknown;
 MACY'S BACKSTAGE, INC., an Ohio
 corporation;
 MACY'S NEW YORK, INC., a Delaware
 Corporation;
 MACYS.COM, LLC, an Ohio Limited
 Liability Company;
 MACY'S CORPORATE SERVICES, INC.,
 a Delaware Corporation;
 and DOES 1-30;

Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
 INJUNCTION

Violation of Proposition 65, the Safe
 Drinking Water and Toxic Enforcement
 Act of 1986 (*Health & Safety Code*, §
 25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
 CASE (exceeds \$25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges causes of action against
 defendants MACY'S, INC., MACY'S BACKSTAGE, INC., MACY'S OF NEW YORK, INC.,
 MACYS.COM, LLC, MACY's CORPORATE SERVICES, INC., and DOES 1-30 as follows:

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant MACY’S, INC. (“MACY’S”) is a business entity form unknown doing business in the State of California at all relevant times herein.
3. Defendant MACY’S BACKSTAGE, INC. (“BACKSTAGE”) is an Ohio corporation, qualified to do business in Ohio, and doing business in the State of California at all relevant times herein.
4. Defendant MACY’S NEW YORK, INC. (“MACY’S NEW YORK”) is a Delaware corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
5. Defendant MACYS.COM, LLC (“MACY’S.COM”) is an Ohio Limited Liability Company, qualified to do business in Ohio, and doing business in the State of California at all relevant times herein.
6. Defendant MACY’S CORPORATE SERVICES, INC. (“MACY’S CORPORATE”) is a Delaware corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-30, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.

- 1 8. At all times mentioned herein, the term “Defendants” includes MACY’S, BACKSTAGE,
2 MACY’S NEW YORK, MACY’S.COM, MACY’S CORPORATE, and DOES 1-30.
- 3 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
4 times mentioned herein have conducted business within the State of California.
- 5 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
6 including DOES 1-30, was an agent, servant, or employee of each of the other
7 Defendants. In conducting the activities alleged in this Complaint, each of the
8 Defendants was acting within the course and scope of this agency, service, or
9 employment, and was acting with the consent, permission, and authorization of each of
10 the other Defendants. All actions of each of the Defendants alleged in this Complaint
11 were ratified and approved by every other Defendant or their officers or managing agents.
12 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
13 wrongful conduct of each of the other Defendants.
- 14 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
15 Defendants was a person doing business within the meaning of Health and Safety Code
16 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
17 employees at all relevant times.

18 **JURISDICTION**

- 19 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
20 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other trial courts. This Court has jurisdiction over this action
22 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
23 violations of Proposition 65 in any Court of competent jurisdiction.
- 24 13. This Court has jurisdiction over Defendants named herein because Defendants either
25 reside or are located in this State or are foreign corporations authorized to do business in
26 California, are registered with the California Secretary of State, or who do sufficient
27 business in California, have sufficient minimum contacts with California, or otherwise
28

1 intentionally avail themselves of the markets within California through their manufacture,
2 distribution, promotion, marketing, or sale of their products within California to render
3 the exercise of jurisdiction by the California courts permissible under traditional notions
4 of fair play and substantial justice.

- 5 14. Venue is proper in the County of Los Angeles because one or more of the instances of
6 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
7 because Defendants conducted, and continue to conduct, business in the County of Los
8 Angeles with respect to the consumer product that is the subject of this action.

9 **BACKGROUND AND PRELIMINARY FACTS**

- 10 15. In 1986, California voters approved an initiative to address growing concerns about
11 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
12 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
13 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
14 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
15 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
16 from contamination, to allow consumers to make informed choices about the products
17 they buy, and to enable persons to protect themselves from toxic chemicals as they see
18 fit.

- 19 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to
20 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
21 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
22 chemicals and chemical families. Proposition 65 imposes warning requirements and
23 other controls that apply to Proposition 65-listed chemicals.

- 24 17. All businesses with ten (10) or more employees that operate or sell products in California
25 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
26 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
27 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
28

reasonable” warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

18. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

19. Plaintiff identified certain practices of manufacturers and distributors exposing, knowingly and intentionally, persons in California to the Proposition 65-listed chemicals of such products without first providing clear and reasonable warnings of such to the exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such practice.

20. On January 1, 1988, the Governor of California added Di(2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

21. On October 24, 2003, the Governor of California added DEHP to the list of chemicals known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to the State to cause developmental and reproductive toxicity, DEHP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

22. On December 20, 2013, the Governor of California added Diisononyl Phthalate (“DINP”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, §

27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DINP to the list of chemicals known to the State to cause cancer, DINP became fully subject to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

23. On or about December 21, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to BACKSTAGE, MACY’S.COM, MACY’S, MACY’S CORPORATE, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Dash Cam.

24. On or about December 21, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to BACKSTAGE, MACY’S, MACY’S NEW YORK, and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Car Mount.

25. On or about February 26, 2019, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning consumer products exposures, subject to a private action to BACKSTAGE, MACY’S, MACY’S CORPORATE, MACY’S.COM and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the product Bluetooth Headphones.

26. Before sending the notices of alleged violation, Plaintiff investigated the consumer products involved, the likelihood that such products would cause users to suffer significant exposures to DEHP and DINP, and the corporate structure of each of the Defendants.

1 27. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
2 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
3 Plaintiff who executed the certificate had consulted with at least one person with relevant
4 and appropriate expertise who reviewed data regarding the exposures to DEHP and
5 DINP, the subject Proposition 65-listed chemical of this action. Based on that
6 information, the attorney for Plaintiff who executed the Certificate of Merit believed
7 there was a reasonable and meritorious case for this private action. The attorney for
8 Plaintiff attached to the Certificate of Merit served on the Attorney General the
9 confidential factual information sufficient to establish the basis of the Certificate of
10 Merit.

11 28. Plaintiff's notices of alleged violations also included a Certificate of Service and a
12 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
13 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

14 29. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notices of the alleged violations to MACY'S, BACKSTAGE, MACY'S NEW
16 YORK, MACYS, MACYS.COM, MACY'S CORPORATE, and the public prosecutors
17 referenced in Paragraphs 23-25.

18 30. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
19 any applicable district attorney or city attorney has commenced and is diligently
20 prosecuting an action against the Defendants.

21 **FIRST CAUSE OF ACTION**

22 **(By CONSUMER ADVOCACY GROUP, INC. and against MACY'S,**
23 **BACKSTAGE, MACY'S.COM, MACY'S CORPORATE, and DOES 1-10 for**
24 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act**
of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

25 **Auto Accessories**

26 31. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
27 reference paragraphs 1 through 30 of this complaint as though fully set forth herein.
28

32. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Dashcam Witness with Polymer Suction Cup Mount, including but not limited to “Dash Cam Witness”; Gabba Goods G”; “Specifications: 2.34 inch HD LCD Screen, 140 Degree Ultra Wide Lens, Still Photos. Includes: Suction Cup Mount”; “Distributed by: M&S Accessory Network Corp.”; “www. GabbaGoods.com”; “Made in China”; UPC 8 13085 02838 4” (“Dash Cam”).

33. Dash Cam contains DEHP.

34. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer, development toxicity, and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in Dash Cam within Plaintiff's notice of alleged violations further discussed above at Paragraph 23.

35. Plaintiff's allegations regarding Dash Cam concerns “[c]onsumer products exposure[s],” which “is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).

36. Plaintiff is informed, believes, and thereon alleges that between December 21, 2015 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Dash Cam, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Dash Cam in California. Defendants know and intend that California consumers will use Dash Cam, thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

37. The principal routes of exposure are through dermal contact and ingestion. Persons sustain exposures by using, handling, mounting, or carrying the Dash Cam without wearing gloves or by touching bare skin or mucous membranes with or without gloves

1 after handling Dash Cam, as well as through direct and indirect hand to mouth contact,
2 hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter
3 emanating from Dash Cam during use, as well as through environmental mediums that
4 carry the DEHP once contained within the Dash Cam.

5 38. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to Dash Cam have been ongoing and continuous, as Defendants
7 engaged and continue to engage in conduct which violates Health and Safety Code
8 section 25249.6, including the manufacture, distribution, promotion, and sale of Dash
9 Cam, so that a separate and distinct violation of Proposition 65 occurred each and every
10 time a person was exposed to DEHP by Dash Cam as mentioned herein.

11 39. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
13 violations alleged herein will continue to occur into the future.

14 40. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to DEHP from Dash Cam, pursuant to Health
16 and Safety Code section 25249.7(b).

17 41. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
18 filing this Complaint.

19 **SECOND CAUSE OF ACTION**

20 **(By CONSUMER ADVOCACY GROUP, INC. and against MACY'S,**
21 **BACKSTAGE, MACY'S NEW YORK, and DOES 11-20 for Violations of**
22 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
(Health & Safety Code, §§ 25249.5, et seq.)

23 **Auto Accessories 2**

24 42. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
25 reference paragraphs 1 through 41 of this complaint as though fully set forth herein.

26 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 distributor, promoter, or retailer of Car Mount with Suction Cup, including but not
28

1 limited to “GABBA GOODS;” “SWIVEL 360° CAR MOUNT;” “CAR MOUNT FOR
2 DASH AND WINDSHIELD;” “DISTRIBUTED BY: M&S ACCESSORY NETWORK
3 CORP.,” “UPC # 8 13085 02340 2” (“Car Mount”).

4 44. Car Mount contains DEHP.

5 45. Defendants knew or should have known that DEHP has been identified by the State of
6 California as a chemical known to cause cancer, development toxicity, and reproductive
7 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
8 were also informed of the presence of DEHP in Car Mount within Plaintiff’s notice of
9 alleged violations further discussed above at Paragraph 24.

10 46. Plaintiff’s allegations regarding Car Mount concerns “[c]onsumer products exposure[s],”
11 which “is an exposure that results from a person’s acquisition, purchase, storage,
12 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
13 that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).

14 47. Plaintiff is informed, believes, and thereon alleges that between December 21, 2015 and
15 the present, each of the Defendants knowingly and intentionally exposed California
16 consumers and users of Car Mount, which Defendants manufactured, distributed, or sold
17 as mentioned above, to DEHP, without first providing any type of clear and reasonable
18 warning of such to the exposed persons before the time of exposure. Defendants have
19 distributed and sold Car Mount in California. Defendants know and intend that
20 California consumers will use Car Mount, thereby exposing them to DEHP. Defendants
21 thereby violated Proposition 65.

22 48. The principal routes of exposure are through dermal contact and ingestion. Persons
23 sustain exposures by using, handling, mounting, or carrying the Car Mount without
24 wearing gloves or by touching bare skin or mucous membranes with or without gloves
25 after handling Car Mount, as well as through direct and indirect hand to mouth contact,
26 hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter
27
28

emanating from Car Mount during use, as well as through environmental mediums that carry the DEHP once contained within the Car Mount.

49. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Car Mount have been ongoing and continuous, as Defendants engaged and continue to engage in conduct which violates Health and Safety Code section 25249.6, including the manufacture, distribution, promotion, and sale of Car Mount, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to DEHP by Car Mount as mentioned herein.

50. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations alleged herein will continue to occur into the future.

51. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to DEHP from Car Mount, pursuant to Health and Safety Code section 25249.7(b).

52. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint.

THIRD CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against MACY'S, BACKSTAGE, MACY'S CORPORATE, MACY'S.COM and DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

Electronic Accessories

53. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by reference paragraphs 1 through 52 of this complaint as though fully set forth herein.

54. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Bluetooth Headphones, including but not limited to "Electric Iridescent Bluetooth Headphones"; "Compatible with all devices, Bluetooth (§) & Non-Bluetooth w/supplied Aux Cable"; "Gabba Goods G (§)";

"UPC 8 13085 02821 6" "Distributed by: M&S Accessory Network Corp. Designed in the U.S.A Made in China ("Headphones").

55. Headphones contain DEHP and DINP.

56. Defendants knew or should have known that DEHP and DINP have been identified by the State of California as a chemical known to cause cancer, development toxicity, and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP and DINP in Headphones within Plaintiff's notice of alleged violations further discussed above at Paragraph 25.

57. Plaintiff's allegations regarding Headphones concerns "[c]onsumer products exposure[s]," which "is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

58. Plaintiff is informed, believes, and thereon alleges that between February 26, 2016 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Headphones, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP and DINP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Headphones in California. Defendants know and intend that California consumers will use Headphones, thereby exposing them to DEHP and DINP. Defendants thereby violated Proposition 65.

59. The principal routes of exposure are through dermal contact and ingestion. Persons sustain exposures by using, handling, mounting, or carrying the Headphones without wearing gloves or by touching bare skin or mucous membranes with or without gloves after handling Headphones, as well as through direct and indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter

emanating from Headphones during use, as well as through environmental mediums that carry the DEHP and DINP once contained within the Headphones.

60. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of Proposition 65 as to Headphones have been ongoing and continuous, as Defendants engaged and continue to engage in conduct which violates Health and Safety Code section 25249.6, including the manufacture, distribution, promotion, and sale of Headphones, so that a separate and distinct violation of Proposition 65 occurred each and every time a person was exposed to DEHP and DINP by Headphones as mentioned herein.

61. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that the violations alleged herein will continue to occur into the future.

62. Based on the allegations herein, Defendants are liable for civil penalties of up to \$2,500.00 per day per individual exposure to DEHP and DINP from Headphones, pursuant to Health and Safety Code section 25249.7(b).

63. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint.

PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

1 Dated: June 10, 2019

YEROUSHALMI & YEROUSHALMI

2
3
4 BY: 

5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28